

154.31-030 Application, review, approval, and monitoring process for sales and use tax incentive -- Standards and criteria for approval -- Execution of agreement - - Annual report.

- (1) The application, approval, and monitoring process under this subchapter shall be as follows:
 - (a) An eligible company with a proposed economic development project may submit an application to the authority. The application shall include the information required by subsection (3) of this section;
 - (b) Upon review of the application and any additional information submitted, the authority may, by resolution, approve an economic development project and authorize the negotiation and execution of an agreement pursuant to subsection (4) of this section. Approval granted pursuant to this subsection shall apply to a specific economic development project at a specific location within the Commonwealth;
 - (c) Upon approval, the authority shall notify the department that an approved company is eligible for a sales and use tax incentive under this subchapter and shall provide the department with the information necessary to monitor the use of incentives by the approved company. The authority shall notify the department if the agreement is extended or amended, or if the incentives are transferred, and shall provide the department with the information necessary to update its records; and
 - (d) The approved company shall be eligible to receive the sales and use tax incentives authorized by the agreement upon the earlier of the completion of the economic development project or expiration of the project term. The approved company shall apply to the department for the sales and use tax incentives as provided in KRS 139.535, and shall, during the project term, submit all information required by the department as provided in KRS 139.535.
- (2) The authority may establish standards for the review of applications and the approval of eligible companies through the promulgation of administrative regulations in accordance with KRS Chapter 13A. In reviewing applications and establishing standards, the authority shall consider the creditworthiness of the eligible company, employment opportunities for Kentucky residents, wages to be paid, whether the eligible company is participating in other incentive programs pursuant to KRS Chapter 154 for the project, the likelihood that the project will be an economic success, and any other factors the authority determines to be relevant.
- (3) The application submitted by an eligible company shall include but not be limited to the following:
 - (a) A description of the proposed economic development project;
 - (b) The anticipated minimum investment in the proposed economic development project;
 - (c) An estimate of the approved recovery amount that the company will seek;
 - (d) A timeline for completion of the proposed economic development project;

- (e) Supporting documentation, as requested by the authority;
 - (f) Payment of any applicable application fee required by the authority; and
 - (g) Any other information requested by the authority.
- (4) (a) Upon approval of an eligible company, the authority may enter into an agreement with the approved company. The terms of the agreement shall be determined by negotiations between the authority and the approved company, and shall include but not be limited to the following provisions:
- 1. The project term;
 - 2. A description of the economic development project;
 - 3. The total approved recovery amount in each category for which the approved company is eligible;
 - 4. That the approved company shall maintain all records and documentation relating to eligible expenditures and the Kentucky sales and use tax paid, and shall provide those records and documentation to the authority or the department upon request;
 - 5. That the approved company shall execute information-sharing agreements prescribed by the department with contractors, vendors, and other related parties to verify the costs of and payment of sales and use tax on the tangible personal property eligible for the sales and use tax incentive under this subchapter;
 - 6. That the sales and use tax incentives shall not be assignable or transferable without written notice to the authority and approval of the authority; and
 - 7. Any other provisions not inconsistent with this subchapter.
- (b) The project term established in the agreement may be extended by approval of the authority for good cause shown; however, the term shall not be extended beyond seven (7) years from the date of approval.
- (c) An approved company may transfer or assign its designation as an approved company upon prior notification to the authority and approval of the authority in a manner prescribed by the authority.
- (5) The contents of a company's filings under this subchapter shall be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884.
- (6) The authority shall annually submit a complete and detailed report of the use of the sales and use tax incentives and participation of approved companies under this subchapter within one hundred twenty (120) days after the end of each fiscal year to the Legislative Research Commission and to the Governor.

Effective: June 26, 2009

History: Created 2009 (1st Extra. Sess.) Ky. Acts ch. 1, sec. 22, effective June 26, 2009.